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POLICE OFFICER'S HANDBOOK

THE CRIMINAL LAW

PART XV

ACCESSORY BEFORE THE FACT

ACCESSORY AFTER THE FACT

BOND ESTREATMENT

FLEMING'S NOTEBOOK...Chapter 115:

1) Pointing Firearms

2) Discharging Firearms at or into Dwellings

3) Trap Guns

4) Unlawful Weapons

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LAW ENFORCEMENT - ETV TRAINING PROGRAM

POLICE OFFICER'S HANDBOOK

ACCESSORY BEFORE THE FACT

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BOND ESTREATMENT

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Hon. Thomas G. Nessler, Jr.
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Greenville, S.C.

"An accessory before the fact procures, counsels, or commands another to commit a felony, but is not himself present, actually or constructively, when the felony is committed. If such person were present at the commission of the crime, he would be a principal and not an accessory."

Thomas G. Nessler, Jr.
Municipal Judge
Greenville, South Carolina

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ACCESSORY BEFORE THE FACT

One may not be convicted of felonious crime, such as housebreaking, for example, unless he is physically present at the scene of the occurrance. The law does provide a penalty for planning a felonious crime for others to commit, or for assisting the actual criminals in any material way before the crime is committed. Such activity is called being an 'accessory before the fact'. The penalty for being an accessory before the fact is the same as that which may be imposed for the principal crime.

A defendant convicted of armed robbery may be sentenced to 25 years; therefore, an accessory before the fact of armed robbery may be sentenced to 25 years. Section 16-1, 1962 Code of Laws of South Carolina, reads:

"Whoever aids in the commission of a felony or is accessory thereto before the fact by counseling, hiring, or otherwise procuring such felony to be committed shall be punished in the manner prescribed for the punishment of the principal felon."

ACCESSORIES BEFORE THE FACT

IN FELONIES ONLY

There can be no accessory before or after the fact of a misdemeanor...but relative to a felony only. An 'accessory before' a misdemeanor is guilty of the principal crime itself. Whitaker v. English, 1 Bay (1 SC L) 15.

AN ACCESSORY BEFORE THE FACT

OF FELONY MAY NOT BE INDICTED

AND CONVICTED AS A PRINCIPAL

One who has aided in the commission of murder (or other felony) may not be convicted of murder. He must be charged as an 'accessory before the fact'. State v. Sheriff, 118 SC 327, 110 SE 807.

ACQUITTAL OF PRINCIPAL

An accessory before the fact may be tried even though the person who actually committed the felony is acquitted or cannot be found. State v. Jennings, 158 SC 422, 155 SE 621.

CHECKLIST FOR ACCESSORY BEFORE THE FACT

In order for a defendant to be guilty of 'accessory before the fact', these things are necessary:

(1) That the defendant advised and agreed, or urged the parties or in some way aided them, to commit the offense.

(2) The defendant was not present when the offense was committed.

(3) The principal did commit the crime.

REF: State v. Grueling, 257 SC 515, 186 SE 2d 706.

ACCESSORY BEFORE THE FACT NOT THE SAME AS CONSPIRACY

The crime of 'criminal conspiracy' is a different offense from 'accessory before the fact', and they constitute separate offenses. State v. Grueling, supra.

ACCESSORY BEFORE THE FACT MAY BE TRIED WITH PRINCIPAL

The principal criminal and an accessory before the fact may be tried together or separately. Section 16-2, 1962 Code of Laws of South Carolina.

NOTES FROM WHARTON

ON CRIMINAL LAW

ACCESSORIES AND OTHER PARTICIPANTS

ACCESSORIES BEFORE THE FACT

An accessory before the fact procures, counsels, or commands another to commit a felony for him but is not himself present, actually or constructively, when the felony is committed. If such person were present actually or constructively at the commission of the crime, he would be a principal and not an accessory.

It is sometimes provided that an accessory before the fact may be prosecuted although the felony contemplated was committed outside of the state. It is also provided by some statutes that an accessory before the fact who has acted in another state may be prosecuted when the felony contemplated was committed within the state.

Mere acquiescence in the commission of a crime, without active participation as an actor by counselling, aiding and abetting, does not render the person criminally liable. Concealment of the knowledge that a felony is about to be committed does not constitute accessoryship.

It is immaterial whether the principal commits the offense in the manner counseled by the accessory. As long as the crime is committed, the advisor is guilty as an accessory before the fact if there is an immediate causal connection between the instigation and the act. In cases where the instigation consists in furnishing aid, it is not necessary that the specific materials or machinery contributed by the accessory should have been used by the principal.

If the principal commits a different crime than that advised or counseled, the person advising him is not guilty as an accessory before the fact. If, however, the noncounseled crime is one which is a

natural and probably consequence of the crime which is counseled, the counselor is accessory before the fact with respect to the crime which is not counseled. Thus a person advising or counseling the commission of a robbery or of arson is an accessory before the fact as to a homicide that occurs in the commission of the counseled offense. He is not responsible for collateral crimes not among such incidental and probable consequences.

If the person advising or counseling the crime changes his mind, he is still liable as an accessory if he does not inform the principals and revokes his command or his advice before the principal has begun the commission of the crime, he is not liable as an accessory if the principal nevertheless commits the crime.

In order to be an accessory before the fact it is necessary that the actor know that he is taking a step to promote the commission of a crime.

It is not necessary, however, that the accessory before the fact have full knowledge of all details of the criminal plan or of the identity of all persons participating therein.

It is not necessary that an accessory should have originated the design of committing the offense. If the principal had previously formed the design, and the alleged accessory encouraged him to carry it out by stating falsehoods, or otherwise, he is guilty as accessory before the fact.

If a person's participation in an illegal plan is not with criminal intent, but as a detective, or as a private citizen co-operating with the public authorities, for the purpose of frustrating the criminal plan or securing evidence against the wrong-doers, his participation does not constitute him an accessory.

An "accessory before the fact" is not a "murderer" within the meaning of a statute of limitations which excepts "murder". A contrary view has been held that accessoryship before the fact to a murder is included within murder.

It is now commonly provided that the distinction between accessories before the fact and principals is abolished and that all accessories before the fact may be tried and convicted in the same manner as though they were principals. A statute which declares that anyone "who aids, abets, counsels, commands, induces, or procures (the) commission (of a crime) is a principal" has the effect of abolishing the distinction between accessories before the fact and principals. In a number of states the distinction between an accessory before the fact and the principal is either expressly or impliedly preserved but at the same time it is commonly provided that the punishment is the same for both offenders.

IN HOMICIDE

There may be accessories before the fact to the crime of murder in different degrees.

Since voluntary manslaughter is by definition a crime which is not planned, a person cannot ordinarily be an accessory before the fact to voluntary manslaughter. But, an instigator may, in hot blood, stimulate a person incensed with another to execute a deed of vengeance on such other, when the offense of the perpetrator would be only manslaughter; and it may also be held that an institagor is guilty of murder in instigating another to commit manslaughter by the rash use of dangerous instrumentalities.

A person may be an accessory before the fact to involuntary manslaughter when he conceals the doing of an act when under the circumstances he should foresee that death or serious bodily harm may result from doing of the acts, although he has no intent or purpose of doing harm.

ACCESSORY AFTER THE FACT

One who aids a felon to escape or to hide his crime is guilty of being an accessory after the fact, and may be punished as a misdemeanant with a maximum of ten years imprisonment. (Common law crime.)

NOTES FROM WHARTON'S CRIMINAL LAW

ACCESSORY AFTER THE FACT

An accessory after the fact is one who, (1) with knowledge (2) that a person has committed a felony, (3) aids him in any way to escape or prevents his arrest and prosecution. Each of the three factors stated is essential, and a person is not an accessory after the fact if any one is missing.

Under the common law, a person cannot be an accessory after the fact if the suspected felon did not commit a felony, either common law or statutory. It is immaterial whether the aided felon is a principal or an accessory before the fact.

The status of accessory after the fact is expressly recognized by a number of statutes which

in varying terms describe such accessory as any person who knowingly aids another who has committed a felony, any crime, or any offense. In some states in which the status of accessory before the fact has been abolished, the accessory after the fact is described by the statute merely as "an accessory".

It is necessary to show that the defendant knew that the felon was guilty, and that he did some act to aid or assist him. Mere knowledge that a person has committed a felony and the failure to inform the authorities of that fact does not make him guilty of an independent substantive offense, such as misprision of treason, misprision or compounding of a felony, or escape.

The statutes defining the offense of accessory after the fact frequently contain an exception in favor of near relatives of the accused. The only relationship at common law which excuses the harboring of a felon is that of a wife to her husband, because she is considered as subject to his control, as well as bound to him by affection.

BOND ESTREATMENT

When a person is charged with a crime, he is entitled to be released within a reasonable time pending trial of his case upon posting of a reasonable bond.

The bond has nothing whatever to do with the possible criminal penalty that may be imposed upon conviction. It is solely for the purpose of guaranteeing that the defendant will appear for trial. In the event the defendant does not appear, the court may order the bond forfeited. The presiding judge will then issue a bench warrant directing that the defendant be arrested and placed in jail to await trial. Forfeiture of bond does not operate to dispose of the criminal charge.

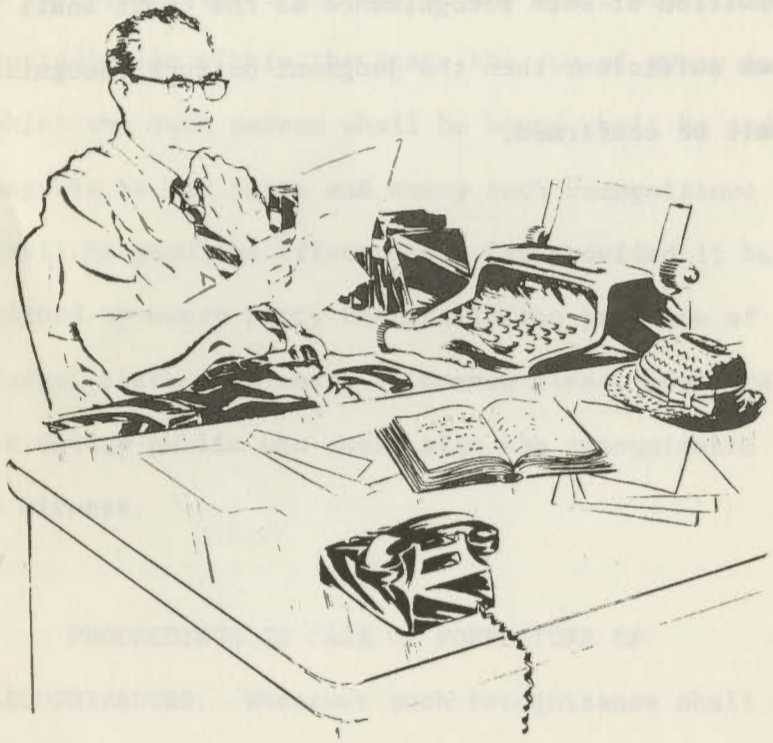
BOND STATUTES

RECOGNIZANCES TO BE IN NAME OF STATE; HOW SIGNED. In all recognizances by any person for keeping the peace, good behavior or appearing as a party, surety or witness at any court of criminal jurisdiction within the State the sum of money in which any such person shall be bound shall be made payable to the State and every such recognizance shall be good and effectual in law provided it be signed by every party thereto in the presence of a judge, clerk of a court of common pleas, magistrate or notary public who shall sign the recognizance as a witness.

PROCEEDINGS IN CASE OF FORFEITURE OF RECOGNIZANCES. Whenever such recognizance shall become forfeited by noncompliance with the condition thereof the Attorney General, solicitor or other person acting for him shall, without delay, issue a notice to summon every party bound in such forfeited

recognizance to be and appear at the next ensuing court of sessions to show cause, if any he has, why judgment should not be confirmed against him, and if any person so bound fail to appear or appearing shall not give such reason for not performing the condition of such recognizance as the court shall deem sufficient then the judgment on such recognizance shall be confirmed.

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK...Chapter 115:

POINTING FIREARMS

"It shall be unlawful for any person to present or point at any other person any loaded or unloaded firearm, and, upon conviction therefor, any such person shall be punished by fine or imprisonment in the discretion of the court. (Maximum of 10 years.) Nothing contained herein shall be construed to abridge the right of self-defense or to apply to theatricals or like performances." Section 16-141, 1962 Code of Laws of South Carolina.

DISCHARGING FIREARMS AT OR INTO DWELLINGS

"Any person who shall unlawfully discharge or cause to be discharged any firearms at or into any house occupied as a dwelling shall be guilty of a misdemeanor and, upon conviction thereof, shall be liable to either fine or imprisonment at hard labor or both fine and imprisonment, in the discretion of the court. (Maximum of 10 years.)" Section 16-142, 1962 Code of Laws of South Carolina.

TRAP GUNS

"It shall be unlawful for any person to construct, set or place a loaded trap gun, spring gun or any like device in any manner in any building or in any place within this State, and any violation of the provisions of this section shall constitute a misdemeanor and be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment of not less than thirty days nor more than one year or by both fine and imprisonment, in the discretion of the court. (Maximum of 10 years.)" Section 16-143, 1962 Code of Laws of South Carolina.

UNLAWFUL WEAPONS

CARRYING CONCEALED WEAPONS IS MISDEMEANOR; FORFEITURE OF WEAPONS. Any person carrying a dirk, slingshot, metal knuckles, razor or other deadly weapon usually used for the infliction of personal injury concealed about his person shall be guilty of a misdemeanor and, upon conviction thereof before a court of competent jurisdiction, shall forfeit to the county or, if convicted in a municipal court, to the municipality the weapon so carried concealed and be fined in the sum of not more than one hundred dollars and not less than twenty dollars or imprisoned not more than thirty nor less than ten days, in the discretion of the court. Nothing herein contained shall be construed to apply to persons carrying concealed weapons upon their own premises or to peace officers in the actual discharge of their duties as such.

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